

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 8, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawai'i

After-the-Fact Consent to Sublease under General Lease No. S-4309, Western Pacific Investments, Lessor, to WESCO Distribution, Inc., a Delaware corporation, as Sublessee; Consent to Extension of Lease Term, General Lease No. S-4309 Western Pacific Investments, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-58:32.

APPLICANT

Western Pacific Investments

REQUEST:

1) Request for After-the-Fact Consent to Subleases:

Western Pacific Investments, a Nevada corporation, as Sublessor, to WESCO Distribution, Inc., a Delaware corporation (WESCO), as Sublessee.

2) Request for Lease Extension:

Improvements financed by Lessee, Western Pacific Investments pursuant to Section 171-36(b) in the amount of \$ 114,485.00. In order for Lessee to amortize this expenditure, the Lessee is requesting an extension of General Lease No. S-4309 of 15 years, commencing on June 23, 2010 and expiring on June 22, 2025 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-36(a)(6) and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lot 6, Hilo Industrial Development, Pohaku Street Section situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-2-58:32, as shown on the attached map labeled Exhibit A.

AREA:

20,000 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Commercial/industrial purposes.

TERM OF LEASE:

40 years, commencing on June 23, 1970 and expiring on June 22, 2010.

Requested extension of 15 years commencing on June 23, 2010 and expiring on June 22, 2025.

TERMS OF SUBLEASE:

The initial sublease term was five years from April 1, 1995 to March 31, 2000. The sublease was extended for another five years from April 1, 2000 to March 31, 2005. The sublease was further extended from April 1, 2005 to March 31, 2010.

ANNUAL RENTAL:

Current rent is \$12,000.00, due in quarterly installments of \$3,000.0 on the 23<sup>rd</sup> day of March, June, September and December of each year.

ANNUAL SUBLEASE RENTAL:

\$156,656.62 (current rental period from April 1, 2005 through March 31, 2010).

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None as the subject subleases are for improved property only and the improvements are not owned by the State and the Lessee pays fair market rent.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 20<sup>th</sup>, 30<sup>th</sup> years of the term. The last rental reopening occurred on June 23, 2000.

Reopenings for the extended term shall be on April 8, 2010 (immediate reopening), and June 23, 2020 (approximately 10<sup>th</sup> year of additional term).

PROPOSED IMPROVEMENTS:

The Lessee will be making substantial improvements and repairs to the property. These improvements and repairs include the refurbishing of the front facade, the replacement of the front entrance door, repairing and repainting the existing fence, new guard rails along the existing retaining wall and the repainting of the entire warehouse structure. The cost of these improvements and repairs is estimated to be \$114,485.00 (exhibit B).

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

SUBLESSEE – WESCO Distribution, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

The Lessee shall complete all the work listed on bid form (exhibit B) in the amount of at least \$114,485 and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2010, or the lease extension shall be subject to cancellation.

REMARKS:

General Lease No. S-4309 was sold at public auction on June 23, 1970 to The Investment Corporation for a period of 40 years. Rental reopenings were to be on the 20<sup>th</sup> and 30<sup>th</sup> years of the lease term.

At its meeting of December 18, 1987, under agenda item F-1-c, the Board consented to the assignment of lease from The Investment Corporation, Assignor, to Western Pacific Investments, Assignee.

At its meeting of November 20, 1997, under agenda item D-34, the Board approved as amended, the sublease agreement between Western Pacific Investments as Sublessor, to WESCO Distribution, Inc. as Sublessee. The consent instrument that the Chairperson executed for this sublease was unusual in two respects. First, it provided for the automatic extension of the sublease without further Board consent, as long as the Sublessor timely notified the Board of the extension. Second, it amended the underlying lease to include the following language:

"The Landlord [Sublessor] shall pay an annual sandwich profit to the Lessor [Board], which may be adjusted by the Lessor, in its sole discretion, from time to time based on changes in circumstances."

In the years that followed, the Department of the Attorney General opined that automatic sublease extensions are not permissible under applicable statutes, and that leases let at public auction generally cannot be amended. Additionally, on May 26, 2000, Item D-24, the Board adopted a sublease policy providing that the Board shall not receive any portion of sublease rents received from subleasing improved space unless that right and method of calculation are specifically stated in the lease. In General Lease No. S-4309, the method of calculation is not stated in the lease. Accordingly, the Board does not have any participation in the sublease rents under the current policy.

Staff is recommending that the Board authorize the Department of the Attorney General (DAG) to amend the 1998 sublease consent and to update it if DAG deems it necessary.

The sublease agreement between Western Pacific Investments and WESCO was renewed on November 18, 1999 for period of five (5) years beginning April 1, 2000 and ending March 31, 2005, and further renewed on April 1, 2005 for another five years ending March 31, 2010. The additional sublease renewals do not have consent from the BLNR.

Western Pacific Investments is seeking a 15-year extension of its lease under applicable law to amortize the cost of planned improvements to the property, including the refurbishing of the front facade, replacement of the front door, repainting the entire warehouse structure, installing a new guardrail on an existing retaining wall, and other improvements listed in Exhibit B at a cost of \$114,485.00.

In support of its request, Western Pacific Investments has provided staff with all the necessary documentation including receipts of expenditures, a copy of improvement specs, 3-years Federal and State tax returns, a credit report, a copy of bank or savings account, and an independent appraisal report determining economic life of the improvements.

The subject parcel is located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that are not scheduled to expire until 2025 and 2030. Upon expiration of these leases, redevelopment of the area may be necessary and appropriate, and staff believes a

comprehensive long-range planning effort for the area should be undertaken. Such planning efforts would be facilitated by having all of the leases in the area expire at, or near, the same time. The requested 15-year extension, i.e., to June 23, 2025, would be consistent with this objective. Staff also acknowledges the Lessee's need to make certain improvements to continue operations during these challenging economic times.

Staff has included an applicant requirement above and recommendation below that Western Pacific Investments complete these repairs and improvements and submits receipts for expenditures to staff by December 31, 2010, or the consent to extension shall be subject to cancellation.

Staff additionally notes that Western Pacific Investments has made substantial repairs or improvements to the premises in the course of the lease. These repairs and improvements included the re-roofing of the building, repairing the roll-up door, and the installation of a new back door.

The Lessee has provided a consulting letter from a certified commercial appraiser regarding the economic life of the proposed improvements to the leasehold property. According to the appraiser and based on his discussions with loan officers from First Hawaiian Bank and Bank of Hawaii, a business loan for such a purpose would be amortized over a 15-year period with a current interest rate of about 6.5% per annum. With a principal of \$114,485, the monthly payment would be \$997.54.

The appraiser has determined that the structure is currently in better than average to good condition and that the proposed improvements would significantly exceed the 15-year period necessary to amortize their costs.

The leased premises have been used substantially for the purpose for which they were leased. There are no outstanding rental reopening issues.

No agency comments were solicited on the request because it involves sublease approvals and a lease extension, and not a new disposition.


#### RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Consent to the subleases under General Lease No. S-4309 between Western Pacific Investments, as Sublessor, and WESCO Distribution, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
  - A. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Authorize the extension of General Lease No. S-4309 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
  - B. Western Pacific Investments shall complete the improvements to the property as outlined in exhibit B and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2010. Failure to comply will result in cancellation of lease extension;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other conditions as may be prescribed by the Chairperson, which are in the best interests of the State.
3. Authorize the Department of the Attorney General to amend the sublease consent dated January 29, 1998 if the Department of the Attorney General deems an amendment necessary.

Respectfully Submitted,

  
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Gordon C. Heit  
Land Agent *KEM*

APPROVED FOR SUBMITTAL:

  
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Laura H. Thielen, Chairperson 

# EXHIBIT A

TMK: 3<sup>rd</sup>/2-2-58:32

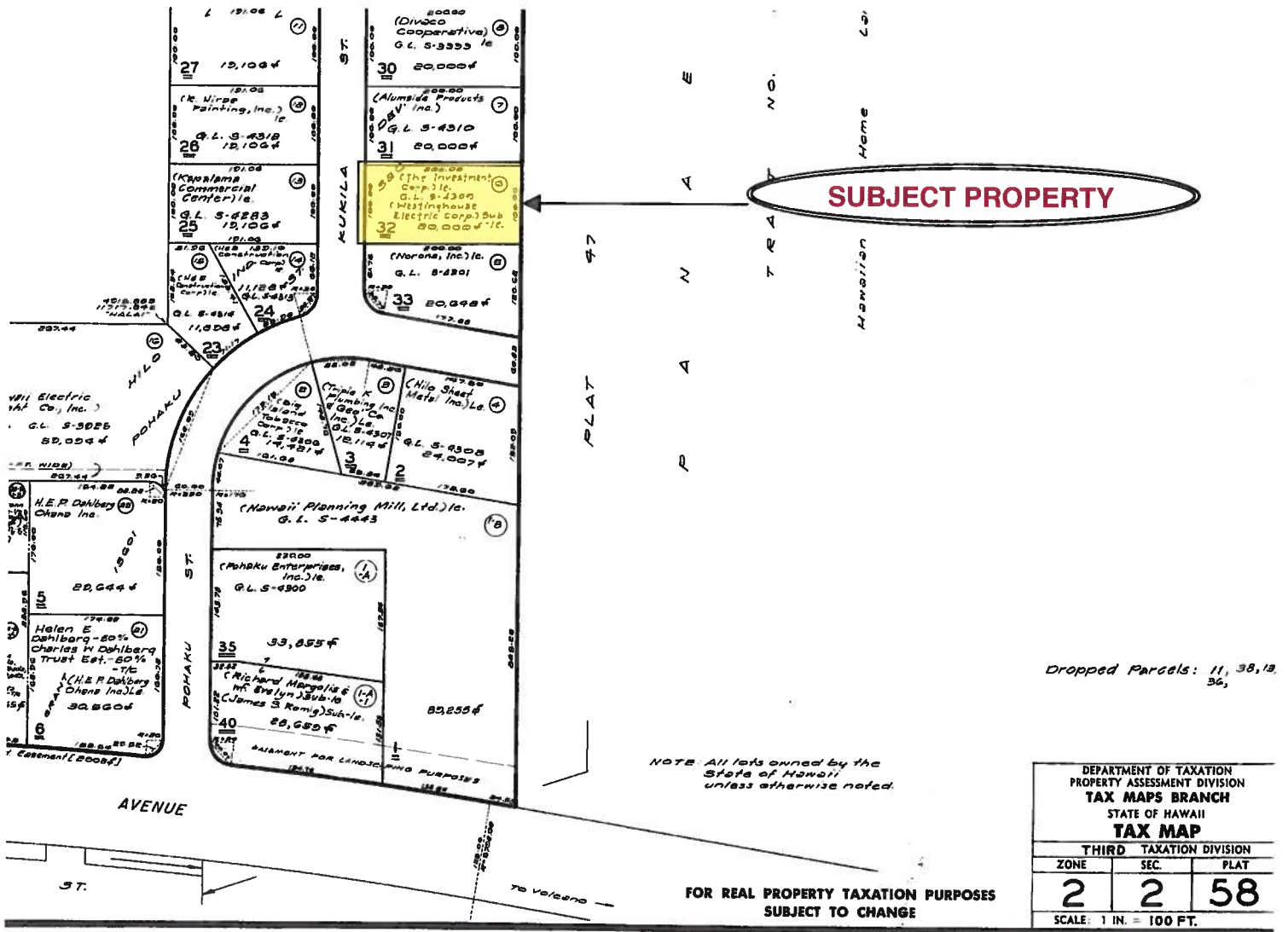


EXHIBIT E

# BASE BID FORM

Hilo, Hawaii

FISCHER

Contractor's Name:  
Address:

Telephone:

Isemoto Contracting Co., Ltd.

648 Pihani Street

Hilo, HI 96720

808-935-7194

Warehouse SF 5,500  
Office SF 500  
Total Building SF 6,000

Pre-Engineered Metal / Concrete-Tilt / Other

Building Type:

Price Price Per Square Foot

Comments

1. Building Cost
  - A. New EIFs at Front Facade
  - B. New Illuminated Box Sign
  - C. New Canvas Awning
  - D. New Manufactured Stone Trim
  - E. New Manufactured Stone Veneer
  - F. New Gravel to Asphalt at Road
  - G. New Aluminum/Glass Entry
  - H. New Guard Rail at Existing Retaining Wall
  - I. New Facia and Gutter
  - J. Existing Metal Siding, Painted to Match New EIFs
  - K. Existing Fence Repaired and Painted at Front
  - L. Other
- SUBTOTAL: BUILDING

\$	\$20,000.00	\$	\$3.33
\$	\$10,000.00	\$	\$1.67
\$	\$2,500.00	\$	\$0.42
\$	\$1,500.00	\$	\$0.25
\$	\$12,000.00	\$	\$2.00
\$	\$3,000.00	\$	\$0.50
\$	\$5,000.00	\$	\$0.83
\$	\$4,050.00	\$	\$0.68
\$	\$2,000.00	\$	\$0.33
\$	\$8,000.00	\$	\$1.33
\$	\$2,000.00	\$	\$0.33
\$	\$2,500.00	\$	\$0.42
\$	\$72,550.00	\$	\$12.09

no removal of siding/no interior finish Allowance. Limited to 32 sf

10' o.c. post spacing  
Wood facia and seamless alum gutti

Equipment cost

2. Contractor General Conditions
  - A. Sales Tax
  - B. Supervision
  - C. Overhead
  - D. Profit
  - E. Insurance
  - F. Other
  - G. Permits
  - H. Architectural, Civil, Structural, MEP
  - I. Due Diligence
- SUBTOTAL: GC General Conditions

\$	\$4,580.00	\$	\$0.76
\$	\$5,320.00	\$	\$0.89
\$	\$3,000.00	\$	\$0.50
\$	\$5,000.00	\$	\$0.83
\$	\$1,060.00	\$	\$0.18
\$	\$2,500.00	\$	\$0.42
\$	\$475.00	\$	\$0.08
\$	\$15,000.00	\$	\$2.50
\$	\$5,000.00	\$	\$0.83
\$	\$41,935.00	\$	\$6.99

Mob/demob

Contractor Name:  
Title:  
Signature:  
Date:

Leslie Isemoto  
President  
Leslie Isemoto  
5/15/09